

REMARKS

Claims 21, 22, 24-33 and 35-49 are pending herein. By this Amendment, Claims 21, 22, 38, and 39 are amended, and new Claims 50-54 are added. Support for the claim amendments and new claims is found in the specification at, *inter alia*, paragraphs [0007], [0008], [0010], [0020], [0032], [0041], and [0048] - [0050] and FIG. 7. No new matter is added by this Amendment.

I. REJECTION UNDER 35 U.S.C. 102(b)

Claims 21-22, 24-33 and 35-49 were rejected under 35 U.S.C. 102 as being anticipated by Loewenthal et al. U.S. Patent No. 6,189,678. This rejection is respectfully traversed.

Loewenthal discloses an apparatus for forming groups of superposed, flat items. The apparatus includes a height-adjusting device for changing a vertical distance of an item-retaining surface from the working flight to vary a number of items forming part of the stack in the chute and being situated in the path of travel of pusher fingers (Abstract). Slide plate portions 38a as well as disks 32' are height-adjustable. See Figures 6-9. For this purpose, slide plate portions 38a are mounted on a carrier 50, which is vertically movable on chute 16a. Carrier 50 is adjustable between stops 53. The stroke between stops is set such that it equals the thickness of item 12. One or two feed items may be removed (col. 5, lines 17-27). Another carrier 56 ensures that the lowermost item 12 of stack 24 arrives over its entire length in contact with slide plate portions 38a when finger 18 is to push one or two items from chute 16a. Thus, in Loewenthal, only the number of items to be pushed from chute 16a is varied (col. 5, lines 28-38).

As noted in paragraph [0006] of the specification, the type of system disclosed in Loewenthal allows for shifting to change the number of articles picked from a stack by a pre-fixed amount. Loewenthal does not teach or suggest: (1) placing a set number of articles within an article gauge and measuring the stack height of the set number of articles with an article gauge to determine any change in stack height, or (2) adjusting a proportional shifter for a change in the stack height in proportion to the set number of articles removed without interrupting the flow of articles, as claimed. Even if Loewenthal discloses determining a stack height of a set number of articles to be removed from a feed stack, there is no teaching or suggestion of an article gauge in which the articles are placed that adjusts a proportional shifter to allow for a change in the stack height of the set number of articles without interrupting the flow of articles.

The Examiner maintains that Loewenthal et al discloses measuring a stack height of a set number of articles with an article gauge 52, 59 attached to each proportional shifter to determine any change in stack height at col. 6 lines 1-10, adjusting each proportional shifter for a change in the stack height in proportion to the set number of articles removed without interrupting a flow of articles at col. 5 lines 65-67. However, drives 52 and 59 are servomotors which include angular position sensors and rotate threaded spindles carrying traveling nuts affixed to the carriers, 50, 56. Drives 52 and 59 do not constitute an article gauge, and articles are not placed within the drives 52, 59. Moreover, Loewenthal discloses at col. 6 lines 3- 7 that:

The stroke of the carrier 56 is set to slightly more than three times the item thickness. In this embodiment, selectively no item or one, two or three items 12 may be pushed out of the chute 16a (emphasis added).

Thus, Loewenthal does not measure the stack of three items, but rather assumes all three items are the same thickness and sets the stroke to be slightly more than three times the thickness of a single item. Measuring the stack height of a set number of articles with an article gauge as claimed is simply not taught or suggested by Loewenthal et al.

Furthermore, measuring the stack height to determine any change in stack height or to set the number of articles for removal, and also adjusting each proportional shifter for a change in the stack height in proportion to the set number of articles removed without interrupting the flow of articles is not taught or suggested. As disclosed in the present specification at paragraph [0006], with a conventional shifter, such as disclosed by Loewenthal et al, the amount shifted is not adjusted for any changes in thickness of the individual articles. Accordingly, a change in article thickness may result in jamming or product breakage when the shifter is set for picking its preset number of articles, e.g. when the shifter is set for either three or four articles. Also, resetting the article picking clearance to fit a change in article thickness for a given number of articles, would not automatically correct or proportionally change the clearance for another given number of articles where the amount of shift is pre-fixed or preset. Moreover, with a conventional shifter, to change the amount of shift, each line feeding the wrapper would have to be shut down for a substantial period of time thereby idling production.

Also, with regard to claim 44, it is not seen where Loewenthal et al disclose pitches of two threaded blocks differ by a factor equal to a ratio of two different pre-determined numbers of articles to be removed from a stack.

With respect to new claims 50, 51, 53, and 54, Loewenthal et al does not teach or suggest the number of articles in an article gauge being different from the number of articles removed.

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Additionally, the feature of new claim 52 wherein each proportional shifter is switched between two different pre-determined numbers of fragile articles to be removed by each stripping device while automatically proportionally compensating for changes in article thickness is not taught or suggested by Loewenthal et al.

Reconsideration and withdrawal of the rejection is respectfully requested.

II. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

Enclosed is a check for \$250.00 for the additional claim fee. Any additional fees should be charged to, or any overpayment in fees should be credited to, Deposit Account No. 501032 (Docket # NBI-866A).

Respectfully submitted,



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Enclosure: Check for \$250.00 additional claim fee.

CERTIFICATE OF MAILING

I hereby certify that this correspondence dated 1/10/07 is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 1/10/07.


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